PSA—*in particular, the strong inferences to be drawn from the* statute's inclusion of an anticompetitive-effect requirement in some subsections of the PSA, but not in others. Pet. 10-13.

2. The "Secretary of Agriculture, who is responsible for administering the Act, has consistently interpreted the Act to prohibit all unfair practices, regardless of whether those practices cause a competitive injury." USDA Br. 10. Respondent disregards the petition's demonstration that, as a result of the Eleventh Circuit's refusal to defer to the USDA's position, the *same* language of the PSA will, at least within the Eleventh Circuit, impose *different* requirements depending on whether meat or poultry is involved. Thus, more is at stake than mere "error correction." BIO 15.

The Eleventh Circuit's failure to defer to the USDA is significant not only because it is incorrect as a matter of administrative law, but also because it threatens to disrupt the PSA's comprehensive regulatory scheme and has anomalous results with significant practical consequences. "Informed by her unique knowledge of and experience with the poultry industry, the Secretary [of Agriculture] has concluded that remedies for breach of contract are not adequate either to deter arbitrary breaches of growing contracts or to protect poultry growers from the economic harms that result from such a breach." USDA Br. at 10. The Eleventh Circuit's rejection of the USDA's position deprives poultry growers such as the Londons of important protections afforded by the PSA. "Because of the unequal bargaining power that exists in the poultry industry, the terms of growing contracts generally favor the processors (such as Fieldale) and place the economic risks of contracting on the growers (such as the Londons)." *Id.* As we pointed out in the petition, the decision below will heighten that unequal bargaining power in a circuit that includes two of the top chicken-producing states in the country.

3. Finally, respondent chooses not to address the importance of the question presented and the untenable nature of the circuit conflict. Instead, respondent suggests that state-law remedies can adequately address the harms that, under the Eleventh Circuit's decision, will no longer be addressed by the PSA. This argument ignores the USDA's expert conclusion, discussed above, that state remedies are inadequate to protect growers. It also runs counter to the determination by Congress that only a compr hensive national regulatory scheme can adequately address the unique risk of both unfair competition and unfair trade practices in the industry. Congress viewed "the business of producing, preparing, and distributing meat products [as] surrounded by conditions which sharply differentiate it from any other industry and place it in a class apart." S. Rep. No. 66-429, at 1 (1920). Congress believed that the industry was "charged with a public interest that [could] not be adequately safeguarded otherwise than through special legislation." *Id.* Respondent's suggestion that protections from unfair trade practices in the poultry industry should depend entirely on an inconsistent patchwork of state law is thus directly at odds with the intent of Congress.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Thomas C. Goldstein
Goldstein & Howe, P.C.
4607 Asbury Place, NW
Washington, DC 20016
(202) 237-7543

Michael T. Kirkpatrick
Counsel of Record
Public Citizen Litigation Group
1600 20th Street, NW
Washington, DC 20009
(202) 588-1000

Cynthia Noles Johnson
Post Office Box 48
Cohutta, GA 30710
(706) 694-4298

November 2005